

STATE OF MICHIGAN  
COURT OF APPEALS

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JACKHILL OIL CO,

Plaintiff-Appellee,

v

POWELL PRODUCTION, INC.,

Defendant-Appellant.

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UNPUBLISHED

September 11, 1998

No. 203492

Hillsdale Circuit Court

LC No. 92-022239 CK

Before: Holbrook, Jr., P.J., and Wahls and Cavanagh, JJ.

MEMORANDUM.

Defendant appeals as of right from a judgment that requires, in part, that the Hillsdale County Treasurer pay directly to plaintiff's attorneys money placed with the treasurer by defendant under court order, in lieu of an appeal bond, in satisfaction of an award of MCR 2.405 sanctions owed by defendant to plaintiff. We reverse and remand.

The trial court erred when it initially refused to offset the sanctions owed by defendant against the more substantial sanctions owed to defendant by plaintiff. "Setoff is a legal or equitable remedy that may occur when two entities that owe money to each other apply their mutual debts against each other. In general, absent a statutory mandate authorizing a setoff in a particular circumstance, setoff is a matter in equity." *Walker v Farmers Ins Exchange*, 226 Mich App 75, 79; 572 NW2d 17 (1997). Accord *Franklin Co v Buhl Land Co*, 264 Mich 531, 532-533; 250 NW 299 (1933). This Court reviews "de novo a trial court's decision whether to grant equitable relief." *Walker, supra* at 79.

MCR 2.405(D) requires the sanctioned party to pay the opposing party's actual costs to the opposing party, and not to the opposing party's attorney. An unpaid sanction obligation constitutes a debt on the part of the sanctioned party. *Colbert v Primary Care Medical, Inc*, 226 Mich App 99, 106; 574 NW2d 36 (1997). Plaintiff owes defendant \$126,147.40 in unpaid MCR 2.405 sanctions. Defendant owes plaintiff \$9,392.95 in unpaid MCR 2.405 sanctions. The record is devoid of any controlling equity that would justify the court's refusal to offset the smaller debt of defendant against the significantly larger debt of plaintiff. Accordingly, the court erred when it refused to offset the debts created by the court's judgments.

Moreover, assuming without deciding that the court correctly determined that plaintiff's attorneys had a common law charging lien against the money held by the treasurer, the payment of the sanctions takes precedence over the charging lien. *Bennett v Weitz*, 220 Mich App 295, 299-302; 559 NW2d 354 (1996). Accordingly, defendant's right to a partial satisfaction of plaintiff's sanction debt held by defendant through setoff would have a higher priority than the charging lien.

We reverse and remand with instructions for the trial court to offset the two debts. We also vacate that portion of the judgment requiring the treasurer to pay the money in the treasurer's possession to plaintiff's attorneys. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.

/s/ Myron H. Wahls

/s/ Mark J. Cavanagh